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2 James E. Horton
3 204 4th St., Suite A
4 Woodland, CA 95695
5 Email: jaakovos@gmail.com
Defendant, In Pro Per

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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF YOLO

10 PEOPLE OF THE STATE) Dept. 10
11 CALIFORNIA,) Case No.: 15-6705
12 Plaintiff,) MOTION TO WAIVE RIGHT TO COUNSEL
13) AND PROCEED IN PRO PER
14) (*Farett Motion pursuant to Farett v. California*)
15 vs.)
16 James E. Horton,)
17 Defendant)
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17 PLEASE TAKE NOTICE that Defendant, James E. Horton moves the Court for an order permitting
18 him to waive counsel and proceed In Pro Per in this action throughout course and included sentencing. The
19 grounds for issuance of this order are substantial conflict with appointed counsel and Sixth Amendment right
20 to choose self-representation.

21 This motion is based on the attached documents and MEMORANDUM IN SUPPORT OF MOTION
22 TO WAIVE RIGHT TO COUNSEL AND PROCEED IN PRO PER, and WAIVE COUNSEL, the declaration
23 of James E. Horton on _____, DECLARATION IN SUPPORT OF ARGUMENTS TO PRESENT
24 FOR SENTENCING and on all papers filed in this action and record of proceedings.

25 Date: _____

26 Respectfully submitted,

27 _____
28 James E. Horton, In Persona Propria

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2 **MEMORANDUM IN SUPPORT OF MOTION TO WAIVE RIGHT TO COUNSEL**
3 **AND PROCEED IN PRO PER**

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6 **CASE SUMMARY**

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8 Defendant, James E. Horton, was brought to trial in this case on 06222016. Jury deliberation ended on
9 06242016. Judge Daniel P. Maguire delayed sentencing hearing with continuance until 06292016. Just
10 thereafter, on 06282016, Defendant filed Motion to Vacate Judgment challenging verdict as wrongful and
11 arguing for dismissal due to inordinately delayed decision on Petition of Writ of Mandate to Appellate
12 Division. Hearing was set upon motion for 07272016.

13 At sentencing hearing on 06292016, Judge retaliated against Defendant's Motion to Vacate Judgment by maliciously terminating defendant's right to self-representation (only for sentencing hearing) and improperly appointing Public Defender as counsel for sentencing phase when Defendant has substantial conflict of interest with Public Defender's Office.

14 Judge Maguire attached continued sentencing hearing on 07132016 to hearing upon Faretta motion.
15 Due to bad-faith delay by the court on this date, hearing for all matters was continued until 08242016. This
16 motion is additional to motion filed on issue on 07112016 in lieu of, and responsive to, actions subsequent to
17 its filing.

18 **STATEMENT OF FACTS**

19 On 07132016, Defendant arrived for continued sentencing hearing in Department 10 at 1000. Upon
20 entering, bailiff informed: incomplete trial was still in progress; Judge delegated his docket to Department 9
21 (Traffic Court) for court resources.

22 In open court in Department 9, before Traffic Court Judge, Defendant argued that hearing before her
23 would prejudice Fair Trial for Defendant since she lacked familiarity with complications in the case for
24 informed decision on matters relevant to sentencing. Presiding judge present ordered Defendant to await
25 Maguire's attention to preside post completion of trial proceeding in Department 10. Due to obvious
26 overburdening of the time and resources of the court by frivolity of this case, this was the third such
27 occurrence during pendency (again) constituting good cause for continuance on same basis upon same
28 circumstances. Other occasions were 04062016 and 04082016.

29 At approximately 1430, Maguire called Defendant to the bench. He verbalized allowance of ten
30 minutes for support of Faretta motion at issue and for answer from prosecution. In response, Defendant orated:
31 as he understands, a Faretta motion does not require a hearing but is decided on its merits. Judge had not yet
32 ordered on motion upon its merits. Judge then postponed further hearing longer in order to hear matters in
33 other cases. Per consultation on date with Defendant, Appointed counsel (Public Defender) initiated (here)
34 request for continuance upon the following grounds: 1) Representation currently lacks trial transcripts needed
35 to factually support issues in defense of actions threatened by prosecution and the court on 06292016
36 prejudicing Defendant's sentencing; 2) Delay of matters due to Maguire's preoccupations scheduled on date
37 (and again, after so many similar occurrences during pendency) resulted in harassment disrupting Defendant's
38 life with procedural overburdening as indigent defendant (in circumstances caused) needed to tend to other life
39 matters and arrived at 1000 while court was restraining by denying hearing past 1445. Judge granted request.
40 He ordered continuance of both matters, hearing upon Faretta motion and sentencing hearing, until 08242016.
41 Again, and without objection by Public Defender, all matters were scheduled accumulated for same hearing on
42 same day.

43 **RULE OF LAW**

“A criminal defendant has a right to represent himself at trial... and trial court must grant defendant’s request if three conditions are met: 1. Defendant must be mentally competent and make his request knowingly and intelligently 2. His request must be unequivocal 3) must make his request within a reasonable time before trial...” (*People v. Welch* (1999) 20 Cal. 4th 701).

In *People v. Gonzalez* (2012) 210 CA4th 724, defendant's request to "go pro per" did not require Marsden hearing since right to waive right to counsel and self-represent was guaranteed irregardless. Here, defendant self-represented against a murder charge; he was convicted and sentenced to 80 years to life in state prison. Upon appeal in California Court of Appeal, Gonzalez argued "he did not effectively waive his right to counsel and *Fareta* since "his request to go pro per was 'a hybrid Marsden/Fareta motion.'" Therefore, the court should have conducted a "hearing as provided for by Marsden, *supra*, 2Cal. 3d 118.." The court held: "When a defendant claims ineffective representation by appointed counsel and asks the court to substitute another appointed attorney, the trial court must allow the defendant to explain his request and state specific reasons why current counsel is not providing adequate representation. The defendant, however, must give at least some clear indication that he wants a substitute attorney" (*People v. Mendozza* (2000) 24 Cal. 4th 130; *People v. Sanchez* (2011) 53 Cal. 4th 80). Absent "clear indication that Gonzalez was requesting a substitute appointed attorney so as to require the court to conduct a Marsden hearing," the court did not have such duty (*People v. Burton* (1989) 49 Cal. 3d 843). Furthermore, "The failure to conduct a Marsden hearing did not render ineffective Gonzalez's waiver of counsel under *Fareta*" (*People v. Gonzalez*, Supra).

However, although the Marsden issue is irrelevant to a Faretta motion when: 1) “counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective counsel is likely to result” (*People v. Jones* (2003) 29 CA4th 1229).

According to *People v Kirkpatrick*, standard for an assertion of irreconcilable conflict with an attorney is measured against standard of “reasonably competent attorney” according to an “informed speculation” (*People v Johnson* (2012) 53 Cal. 4th 519).

By statute, a raised doubt of mental competence (and to stand trial) is to be initially raised by judge, not defense counsel. Pursuant to PC § 1368: (a) “If, during the pendency of an action and prior to judgment..., a doubt arises in the mind of the judge as to the mental competence of the defendant, he or she shall state that doubt in the record and inquire of the attorney for the defendant whether, in the opinion of the attorney, the defendant is mentally competent... (T)he defendant’s mental competence is to be determined in a hearing which is held pursuant to Sections 1368.1 and 1369.”

ANALYSIS

COURT'S APPOINTMENT OF PUBLIC DEFENDER AS COUNSEL WAS IMPROPER DUE TO
IRRECONCILABLE CONFLICT AND AGAINST DEFENDANT'S CONSENT

Since “counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective counsel is likely to result” due to maliciously inadequate counsel previously, court abused discretion considering appointment of Yolo County Public Defender’s (*People v. Jones*, Supra). During pendencies, they have harmed defendant’s cases by inadequate counsel as follows:

1. FIRSTLY, PUBLIC DEFENDER RON JOHNSON RAISED MALICIOUS DOUBT OF DEFENDANT'S MENTAL COMPETENCE TO STAND TRIAL.

At arraignment for case: 13-3628, Defendant requested Public Defender. Subsequently, Ron Johnson, immediately upon an inadequate consultation interview, raised a malicious doubt of Defendant's mental competence to stand trial. Doubt was extremely overzealous outside standards at issue – harmful to Defendant and his case. Initially, Johnson's "doubt" was communicated to defendant prior to defendant's *Faretta* motion

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2 on 11012013. Therefore, counsel raised doubt of incompetence to stand trial by a motion pursuant to Cal.
3 Penal Code § 1368. Cal. Penal Code § 1367(a) defines relevant standard for determination at issue. It includes
4 inability to “understand the nature of the criminal proceedings against him” and “to assist counsel in the
5 conduct of defense in a rational manner.” It is outrageous to assert Defendant does not meet standard. Here, it
6 is also to be considered, any noncooperation with former counsel is due to irreconcilable conflict stemming
7 from extremely averse strategy counsel presented to defendant purporting to be a defense. Defendant rightly
8 recognizes violation of attorney oath and fiduciary responsibility. He possesses right by law to defense from
9 their strategy and incompetent counsel.

10 During Marsden hearing on 12062016, while presenting argument concerning his claim of “doubt,”
11 counsel emphasized reliance upon: 1) verbatim, misrepresented assertions from police reports discriminating
12 against defendant’s socio-economic status by appearance, and distorted paraphrase of his statements made
13 while being arrested, 2) cursory, speculative implication (highly prejudicial) of short concise statements in
14 answer to interview questions concerning a “surrounding situational context” (defendant arrived for
15 consultation prepared to discuss defense relevant to immediate matter at hand -- frivolous charge of violating
16 Cal. Penal Code § 148(A)(1) defendant). He began interview with implicative questioning suggestive
17 concerning government misconduct toward defendant.

18 In hearing... Johnson communicated to the court a paranoid assertion that defendant (during
19 consultation) accused him of “being in a conspiracy against (him).” This was a distortion of defendant’s own
20 brief words during consultation without actual interview – a paranoid reaction.

21 In actuality, after Defendant responded to a bizarre, irrelevant line of interview questioning, Johnson
22 responded, “If you think I am involved, then don’t talk to me anymore.” This begged the question: how,
23 therefore, is defendant to be adequately defended by present counsel? Based on informed speculation
24 described above, Defendant since asserted: Johnson’s defensive reaction engendered distrust in Public
25 Defender (Ronald Howard, supervisor) for adequate counsel in his best interest as a reasonably competent
26 attorney (*People v Johnson*, Supra). As to this informed speculation, there is a reasonable recognition as
27 public knowledge that conspiracy to commit violations of constitutional rights occur; such is possible between
28 possible between local police, prosecution and public defenders. When actions of a public defender seem to be
prejudicial favoring prosecution, Defendant’s assertions are rational.

29 Furthermore, facts evidence Johnson’s doubts were motivated by unjust prejudice toward
30 client/defendant. Johnson imposed too brief a time to discuss the issues. Within the brief time-frame (while
31 obstructing further accommodation to clarify), Johnson inferentially leaped to a discriminatory judgment
32 flying in the face of presumption upon “right to petition the government for a redress of grievances” provided
33 by the 1st Amendment and prejudicial to said right. (It is public knowledge that this provision was framed with
34 conviction that “absolute power corrupts absolutely” and that government proclivity to abuse power to oppress
35 must be limited respecting fundamental rights.)

36 As a result, defendant asserts substantial conflict of interest with counsel which unfairly detriments his
37 Sixth Amendment right to fair “Due Process.” Johnson has failed to show substantial evidence to support
38 doubt about defendant’s “**competence to stand trial**” within scope of court’s discretion at issue. This was
39 abuse of process exploiting provisions of Cal. Penal Code § 1368 out of context. At pretrial conference during
40 pendency of initial pendency (Case: 13-3628), Johnson maliciously and overzealously initiated raised doubt of
41 defendant’s competence – and as defense counsel; doubt did not initially arise in the mind of the judge. Issue
42 was further handled during improper Marsden hearing upon a Faretta. Said motion was responsive to such
43 ineffective, incompetent, inadequate defense counsel harmful to defendant’s best interest (hence contravening
44 fiduciary oath). At said Marsden hearing, Johnson aggressively defended act of forcing himself as counsel
45 against defendant’s assertions aforesaid. Also, court ordered an independent examination of defendant’s
46 mental competence. Independent examiner subsequently determined for defendant’s competence to “stand
47 trial” and to “self-represent.” Thus, Howard’s raised doubts (harmful to defendant’s proper defense within Due
48 Process) were extremely embarrassed.

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2 *Farella* holds, “to force a lawyer on a defendant can only lead him to believe that the law contrives
3 against him.” [On this point, the *Johnson* court further held, “ A court may not deny self-representation based
4 on a defendant’s mental state because it believes the matter could be tried more efficiently, or even more
5 fairly, with attorneys on both sides” (*People v Johnson* (2012) 53 Cal. 4th 519).]
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7 To reiterate, Johnson expressed to client, therefore, “do not talk to me.” Thereby, and by series of
8 neglectful and retaliatory actions since, Johnson and other Public Defenders have flagrantly evidenced
9 colluding in a Conspiracy to Commit Constitutional Infractions against defendant’s best interest for defense
10 (as elsewhere described).

11 Defendant believes record does in fact “clearly show” inadequate representation rising to
12 irreconcilable conflict such that ineffective counsel would likely deny defendant a constitutional right to a fair
13 case outcome. (See points in Defendant’s Motion to Waive Right to Counsel and Proceed In Pro Per).

14 Since “counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective
15 representation is likely to result” *People v Jones* (2003) 29 C4th 1229), “defendant’s right to counsel would be
16 substantially impaired by continuing with (Public Defender as) attorney” (*People v Marsden*(1970) 2 C3d
17 118). According to *Brown v Craven*, to compel a defendant “to undergo trial with assistance of attorney with
18 whom he has become embroiled in irreconcilable conflict is to deprive him effective assistance of any counsel
19 whatsoever” (*Brown v Craven* (1971) 438 F.2d 334). Also, relying on this case, *Farella* held, “thrusting
20 counsel upon the accused against his considered wish violates the logic of the Sixth Amendment because
21 counsel is to be an assistant not a master... where distrust, animosity, or other personal differences between
22 the accused and his would be counsel have rendered representation unlikely or impossible” (*Farella*, Supra).

23 Furthermore, during pendencies, Defendant has demonstrated competence to self-represent as his only
24 adequate counsel for defense available respecting constitutional rights to Due Process Fair trial. Self-
25 representation is his only option.

26 2. SUBSTANTIAL CONFLICT OF PROCRASTINATION OF PUBLIC DEFENDERS
27 CONSTITUTES INCOMPETENT INEFFECTIVE COUNSEL

28 Public Defenders caused harm to Defendant’s cases with incompetent, ineffective counsel and by
29 negligent Procrastination since at first appointed. Meanwhile, Defendant deserves an adequate XIth
30 Amendment defense.

31 On 06292016, Judge Maguire appointed counsel from Public Defender's Office fully aware of my
32 substantial conflict with them (as raised mentioned above). Defendant has waived same counsel previously
33 before same judge on this basis. Said public officials have neglected, by procrastination, defense for Defendant
34 by requesting anomalous procedure of "trailing cases" (as averred above within Statement of Facts.) The court
35 favored. Defendant's cases (and outcome) have been harmed severely as a result. Also, this has been much
36 cause of disruption to Defendant's life from bad-faith delay of prosecution and the court (deprival of right to
37 Speedy Trial without remedy thus far). Repeatedly, however, the court has based prejudicial denials of
38 Defendant's Speedy Trial motions (in open hearing) on that record reflects Defendant has requested too
39 numerous continuances. It is suggested, therefore, that Defendant has not asserted Speedy Trial Rights - and as
40 only factor to consider as oversimplification of issue.

41 Firstly, he has argued (repeatedly): bad-faith delays were result of procrastination of public officials
42 which he had not consented to. Conversely, he contended with decisions of appointed counsel to request said
43 "trailing." The Case Summary report often reflects "Matters Heard" for matters actually held out and
44 neglected. Also, continuances were not requested by Defendant. Secondly, by addressing issues of bad-faith
45 delay by motions, Defendant had practiced exactly expected to fulfill assertion of Speedy Trial Rights -
46 addressal of bad-faith delay by public officials.

COURT IMPROPERLY SET HEARING UPON DEFENDANT'S FARETTA MOTION
SIMULTANEOUSLY WITH SENTENCING HEARING ON 08242016

Defendant prima facie meets standard at issue (see Defendant's previous *Faretta* motion). Substantial conflict irreconcilable has actually resulted from default of Public Defenders. Defendant, however, has "assist(ed) in a rational manner" with adequate counsel decisions. Defendant does not consent to counsel provided which is in violation of Attorney's Oath and his best interest. Defendant has "present(ed) and "conducted his own defense in a rational manner" as adequate counsel (for example, see Declaration Supporting Arguments to Present for Sentencing).

A Defendant's right to decide how to defend should be respected unless it will result in significant prejudice to him or disruption to the orderly process of justice under circumstances of the particular case. (*People v Hernandez* (2006) 139 cal. App. 101). Here, prejudice and disruption to orderly process result by disrespect of Defendant's right.

Hearing to determine “inadequate representation” or “irreconcilable conflict” upon *Faretta* motion is improper (*Gonzalez*, Supra; *Hernandez*, Supra). The *Hernandez* court held that trial court applied wrong standard to defendant’s request, holding what was in essence a *Marsden* hearing for defendants with appointed counsel, by requiring defendant in instant case to demonstrate that his counsel was providing inadequate representation or that he and his attorney were embroiled in an irreconcilable conflict” (*People v Hernandez* (2006) 139 cal. App. 101).

Furthermore, termination (even specific to sentencing) was abuse of discretion beyond standard and scope at issue. Prosecutor vindictively raised doubt. Court favored on grounds irrelevant stating belief Defendant's representation choice "was irrational" (as record accurate would reflect).

Throughout pendencies and trial, Defendant never spoke nor acted “so disruptive, obstreperous, disobedient, disrespectful or obstructionist... as to preclude the exercise of the right” (*People v Welch*(1999) 20 Cal. 4th 701). Defendant has “abid(ed) by rules of procedural and courtroom protocol” without misconduct having “impact on the core integrity of the trial” (*People v Rudd* (63 Cal. App. 4th 620; *People v Carson* (35 Cal. 4th 1). Conversely, other parties have prejudiced outcome harmful to Due Process and Fair Trial. He has been confronted with actions requiring aggressive Defense he, himself could only provide and afford.

Defendant never spoke words “in themselves contemptuous,” nor “uttered in an insolent or defiant manner” (*Rose v Superior Court in and for Los Angeles County* (1934) 140 Cal. App. 418). He acted within right, in context, addressing blatant denial of Due Process. He never did “persistent(ly) (interrupt)... court proceedings... as to embarrass the administration of justice” (*In re Halliman* (1932) 126 Cal. App. 121). Pro Se, he possessed “the duty to protect (his) interests (as Defendant)” and “press legitimate argument and to protest an erroneous ruling...” which was act obstructing justice by Due Process (*In re Halliman*, Supra). Here, the court must not unduly interfere with representation’s “obligation to vigorously represent interests of a Defendant;” apparent disrespect was “objectively clear” but “the subjective impression of the judge” (*Degeorge v Superior Court* (1974) 40 Cal. App. 3d 305).

Therefore, hearing date set upon motion was improper since motion is to be decided upon its own merits.

CONCLUSION

Judge Maguire, on 06292016, grossly abused discretion in revoking self-representation – even if just for sentencing. Also, appointing Public Defender was highly improper given factors to weigh.

Wherefore, Defendant requests the court to reverse revocation of his right to self-representation, regrant right to waive counsel, and for sentencing hearing included.

Date: _____

Respectfully submitted,

James E. Horton, In Persona Propria

ORDER

Based on the Motion of Defendant,

IT IS ORDERED that Defendant's Motion to Waive Right to Counsel and Proceed in Pro Per be granted []/ not granted [].

Date: _____

Presiding Judge

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2 DECLARATION IN SUPPORT OF ARGUMENTS TO PRESENT FOR SENTENCING

3 I, James E. Horton, as Defendant In Propria Persona, declare under penalty of perjury, on information
4 and belief, under the laws of the State of California that the foregoing is true and correct:

5 Whereas, Defendant came prepared to address sentencing issues in open court at sentencing hearing on
6 06292016 as follows:

- 7 A. Defendant possesses extremely light criminal history entailing only: 1) traffic tickets and equivalent,
8 and 2) From early 1990's in Ravenna, Ohio... A Complicity charge, incident during early 1990's, for
9 failure to report a theft by others which case has been expungable.
- 10 B. Sentence needs to be specific to the charge at issue. Continually, District Attorney (and judge)
11 maliciously attempt insist to attach stigmatizing ideas related to unproven, false charge of Annoying a
12 Child in a bathroom in order to unfairly improperly heighten sentence inappropriately. Verdict
13 rendered was specific to a charge of violation of PC section 415.

14 Whereas, when Defendant asserted to present issues in open court 07272016, Court blatantly denied Due
15 Process procedure as explained in Statement of Facts. Obstruction maliciously prejudiced Defendant's rights
16 at issue.

17 Whereas, despite full-faith diligent effort, Defendant has been unable to procure his own criminal history
18 within impracticable circumstances overburdened as explained to court. He performed actions as follows.
19 Defendant requested assistance, as full right, from Public Defender's Office. Public Defender, James Bradford
20 refused and office referred to District Attorney's Office as customary provider to attorney's of such criminal
21 history information. Subsequently, District Attorney's Office refused delivery to Defendant and referred to the
22 California Department of Justice. Defendant then visited the California Department of Justice to acquire which
23 informed of impracticable procedure unaffordable to Defendant and without means of waiver of fees.

24 Whereas, criminal history is not available to Defendant and for attachment as support. Defendant, hereby,
25 avers however that said record is readily available to access (by other parties) and that it corroborates
26 averments herein.

27 Date:_____

28 Respectfully submitted,

James E. Horton, In Persona Propria

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2 DECLARATION OF JAMES E. HORTON
3 IN SUPPORT OF MOTION TO WAIVE RIGHT TO COUNSEL AND PROCEED IN PRO PER

4 1. I, James E. Horton, am the Defendant in the above entitled case.
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I declare under penalty of perjury the following: THE COURT MALICIOUSLY ABUSED DISCRETION BEYOND STANDARD AND SCOPE AT ISSUE IN REVOKING DEFENDANT'S RIGHT TO SELF-REPRESENTATION; COURT RELIED ON PROSECUTION'S REASONING BASED ON MISREPRESENTATION OF FACTS AND MISINTERPRETATION OF AUTHORITY CITED; THE COURT IMPROPERLY APPOINTED PUBLIC DEFENDER WITH WHOM DEFENDANT HAS SUBSTANTIAL CONFLICT OF INTEREST AS COUNSEL AND AGAINST DEFENDANT'S CONSENT.

8 2. At all times from the alleged commission of this offense, I was indigent in Woodland, CA.

9 3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true
10 and correct to the best of my knowledge.

11 Date: _____

12 _____
13 James E. Horton, In Propria Persona
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2 **DECLARATION OF PERSONAL SERVICE**
3 I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen years, and
4 Defendant, In Propria Persona in the within action. My mailing address is 204 4th St., Suite A, Woodland, CA
5 95695.
6

7 On _____, I deposited in the United States mail at the Post Office in Woodland, CA, a copy of
8 the attached MOTION TO WAIVE RIGHT COUNSEL AND PROCEED IN PRO PER in a sealed envelope,
9 with postage fully prepaid, by certified mail addressed to the person named below:

10
11 **DISTRICT ATTORNEY'S OFFICE**
12 301 Second Street
13 Woodland, CA 95695
14

15 Executed under penalty of perjury on _____, in Woodland, California.
16

17 _____
18 James E. Horton, In Propria Persona
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DECLARATION OF PERSONAL SERVICE BY HAND DELIVERY

I, the undersigned, declare that I am a citizen of the United States, over the age of eighteen years, and self-representing Defendant/Petitioner in this matter. My mailing address is 204 4th St., Suite A, Woodland, CA 95695.

On _____, I personally served a true copy of NOTICE OF MOTION TO GRANT DISMISSAL AND VACATE JUDGEMENT in the matter of *People of California vs. James Horton* (case #: 15-6705) on the Public Defender's Office, 814 North Street, Woodland, California 95695, and DISTRICT ATTORNEY'S OFFICE 301 Second Street, Woodland, CA 95695.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____

James E. Horton, In Propria Persona

Received by: _____

Date: _____